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APR 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Notice of Proposed Rulemaking

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On March 11, 1994, the Federal Communications Commission (FCC or Commission) initiated the above-captioned rulemaking (NPRM) to implement § 9 of the Federal Communications Act, 47 U.S.C. § 159 (Communications Act). The section authorizes the Commission to collect fees from entities it regulates under the Communications Act to cover the cost of those regulatory efforts.¹ The statute specifies amounts that the FCC is required to charge to a variety of regulated entities including common carriers and cable operators. The Commission, pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12 (RFA), determined that the proposed rule could have a significant

¹ The Commission also has the authority, pursuant to § 8 of the Communications Act, 47 U.S.C. § 158, to charge fees for processing of license applications. Those fees are not the subject of this rulemaking.

economic impact upon a substantial number of small entities and prepared an initial regulatory flexibility analysis as required by § 603 of the RFA.

The Office of Advocacy commends the Commission for recognizing the impact that the payment of these regulatory fees will have on small providers of telecommunication services. However, the Office of Advocacy is troubled by the disparate and adverse treatment of cable operators by the proposed fee collection rule in comparison to the treatment of common carriers.² The Office of Advocacy believes that cable operators' fees should be calculated in a manner similar to that of local and interexchange carriers.

Congress set the regulatory fee for cable operators at \$370 per 1000 subscribers. The FCC proposes that this fee be rounded up to the next 1000 subscriber payment for any portion in excess of 1000 subscribers. NPRM at ¶ 75.³ For cable systems with less than 1000 subscribers, the Commission proposes a fee of \$370. *Id.* Under the FCC's proposal, a cable operator with 1001 subscribers will pay the same amount as an operator with 2000

² The Office of Advocacy also notes that cellular telephone service providers are also treated in a manner similar to cable operators. However, their fees are substantially less and they do not operate under rate regulatory restrictions like cable operators or local exchange carriers.

³ The Commission states that the fee for cable operators will be "\$370 per 1000 subscribers or any portion thereof." NPRM at ¶ 75.

subscribers, a 2001 subscriber operator will pay the same as one with 3000 subscribers and so forth.

Section 9 does not require this treatment and the Commission treats other types of carriers with a similar infrastructure quite differently. Fees are also assessed to a wide variety of common carriers at the rate of \$60 per 1000 lines. Yet, the Commission does not use the "any portion thereof" language for common carriers' fees. *Id.* at ¶¶ 89-90. Calculations by the FCC demonstrate that the fees for common carriers are prorated in proportion to the actual number of lines. Thus, a local exchange carrier with 1,200 lines would not pay \$120 dollars but only \$72.

The Office of Advocacy sees no reason to treat cable operators differently than other common carriers.⁴ The Office of Advocacy recommends that the FCC dispense with this disparate treatment of cable operators. Their regulatory fees should be prorated in the same manner as other common carriers. This will be especially beneficial to cable operators because they are operating under new and severe rate regulatory restrictions.

⁴ Although cable operators are not common carriers in the strict sense of that term, the rate regulatory burdens imposed on cable operators mirror those of other rate-regulated common carriers. In fact, cable operators are subject to tighter rate regulation than many similarly-sized local exchange carriers.

To the extent that the Commission can alleviate some of these fiscal burdens through modification of its fee collection process, the Office of Advocacy strongly recommends that the FCC do so.

Respectfully submitted,



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